

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
NO: 7:01-CR-00068-BR

UNITED STATES OF AMERICA )  
                                )  
                                )  
                                )  
v.                            )  
                                )  
                                )  
SHAWN L. GRADY            )  
                                )

ORDER

This matter is before the court on defendant's letter dated 6 September 2016. (DE # 23.)

In the letter, defendant requests that the court treat the letter as a motion to terminate or reduce his fine. The government filed a response in opposition to the motion. (DE # 25.)

In 2001, defendant's sentence included a term of imprisonment and a fine of \$10,632, which the court ordered that defendant pay in full immediately. Although his term of imprisonment was subsequently lowered by virtue of retroactive amendments to the sentencing guidelines, the remainder of defendant's sentence, including the fine, remained unchanged.

According to defendant, he was released from custody in November 2011. Based on his reduced offense level (due to the amendments to the sentencing guidelines), his inability to pay, and his limited means of income, defendants now requests that the court terminate or reduce the fine. According to the government, the remaining balance of the fine is \$5293.76. (Resp., DE # 25, at 2.)

Other than on appeal, a fine may be modified on the government's motion pursuant to 18 U.S.C. § 3573 or on a motion to correct a sentencing error pursuant to Federal Rule of Criminal Procedure 35. See 18 U.S.C. § 3572(c); United States v. Jeffrey, No. CR 111-273, 2015 WL 556431, at \*1 (S.D. Ga. Feb. 10, 2015). Obviously, here it is *defendant*, not the government,

who seeks modification of the fine, and defendant's request was made well outside Rule 35's requirement of making a motion within 14 days of sentencing. Therefore, the court cannot modify defendant's fine on either of these grounds.

Additionally, a defendant may seek modification of a fine pursuant to 18 U.S.C. § 3572(d)(3). Jeffrey, 2015 WL 556431, at \*1. However, that provision is only applicable to a judgment for a fine which permits payments in installments, 18 U.S.C. § 3672(d)(3), which, as noted, the court did not permit here.

The court is without authority to terminate or otherwise modify defendant's fine. Accordingly, the motion is DENIED.

This 23 November 2016.



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W. Earl Britt  
Senior U.S. District Judge